

**Introduced by Senator Correa**

February 26, 2009

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An act to amend Section 1185 of the Civil Code, relating to notaries public.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 461, as introduced, Correa. Notaries public.

Existing law specifies certain documents as allowable forms of identification for a credible witness, who, by oath or affirmation, attests to the identity of an individual executing a written instrument in the presence of, and acknowledged by, a notary public.

This bill would add a Matricula Consular, issued through a consulate office of the Mexican Government, as an allowable form of identification for a credible witness to prove the identity of an individual who executes a written instrument.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 1185 of the Civil Code is amended to
- 2     read:
- 3     1185. (a) The acknowledgment of an instrument shall not be
- 4     taken unless the officer taking it has satisfactory evidence that the
- 5     person making the acknowledgment is the individual who is
- 6     described in and who executed the instrument.
- 7     (b) For the purposes of this section "satisfactory evidence"
- 8     means the absence of any information, evidence, or other
- 9     circumstances that would lead a reasonable person to believe that

1 the person making the acknowledgment is not the individual he  
2 or she claims to be and any one of the following:

3 (1) (A) The oath or affirmation of a credible witness personally  
4 known to the officer, whose identity is proven to the officer upon  
5 presentation of any document satisfying the requirements of  
6 paragraph (3) or (4), that the person making the acknowledgment  
7 is personally known to the witness and that each of the following  
8 are true:

9 (i) The person making the acknowledgment is the person named  
10 in the document.

11 (ii) The person making the acknowledgment is personally known  
12 to the witness.

13 (iii) That it is the reasonable belief of the witness that the  
14 circumstances of the person making the acknowledgment are such  
15 that it would be very difficult or impossible for that person to  
16 obtain another form of identification.

17 (iv) The person making the acknowledgment does not possess  
18 any of the identification documents named in paragraphs (3) and  
19 (4).

20 (v) The witness does not have a financial interest in the  
21 document being acknowledged and is not named in the document.

22 (B) A notary public who violates this section by failing to obtain  
23 the satisfactory evidence required by subparagraph (A) shall be  
24 subject to a civil penalty not exceeding ten thousand dollars  
25 (\$10,000). An action to impose this civil penalty may be brought  
26 by the Secretary of State in an administrative proceeding or any  
27 public prosecutor in superior court, and shall be enforced as a civil  
28 judgment. A public prosecutor shall inform the secretary of any  
29 civil penalty imposed under this subparagraph.

30 (2) The oath or affirmation under penalty of perjury of two  
31 credible witnesses, whose identities are proven to the officer upon  
32 the presentation of any document satisfying the requirements of  
33 paragraph (3) or (4), that each statement in paragraph (1) of this  
34 subdivision is true.

35 (3) Reasonable reliance on the presentation to the officer of any  
36 one of the following, if the document is current or has been issued  
37 within five years:

38 (A) An identification card or driver's license issued by the  
39 California Department of Motor Vehicles.

1 (B) A passport issued by the Department of State of the United  
2 States.

3 (4) Reasonable reliance on the presentation of any one of the  
4 following, provided that a document specified in subparagraphs  
5 (A) to (F), inclusive, shall either be current or have been issued  
6 within five years and shall contain a photograph and description  
7 of the person named on it, shall be signed by the person, shall bear  
8 a serial or other identifying number, and, in the event that the  
9 document is a passport, shall have been stamped by the United  
10 States Immigration and Naturalization Service:

11 (A) A passport issued by a foreign government.

12 (B) A driver's license issued by a state other than California or  
13 by a Canadian or Mexican public agency authorized to issue  
14 drivers' licenses.

15 (C) An identification card issued by a state other than California.

16 (D) An identification card issued by any branch of the Armed  
17 Forces of the United States.

18 (E) *A Matricula Consular issued by the Government of Mexico*  
19 *through its consulate offices.*

20 ~~(E)~~

21 (F) An inmate identification card issued on or after January 1,  
22 1988, by the Department of Corrections and Rehabilitation, if the  
23 inmate is in custody.

24 ~~(F)~~

25 (G) An employee identification card issued by an agency or  
26 office of the State of California, or by an agency or office of a city,  
27 county, or city and county in this state.

28 ~~(G)~~

29 (H) An inmate identification card issued prior to January 1,  
30 1988, by the Department of Corrections and Rehabilitation, if the  
31 inmate is in custody.

32 (c) An officer who has taken an acknowledgment pursuant to  
33 this section shall be presumed to have operated in accordance with  
34 the provisions of law.

35 (d) Any party who files an action for damages based on the  
36 failure of the officer to establish the proper identity of the person  
37 making the acknowledgment shall have the burden of proof in  
38 establishing the negligence or misconduct of the officer.

- 1 (e) Any person convicted of perjury under this section shall
- 2 forfeit any financial interest in the document.

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